

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
NextiraOne, LLC
File No. EB-06-IH-1392

NOTICE OF DEBARMENT AND ORDER DENYING WAIVER PETITION

Adopted: August 24, 2006

Released: January 22, 2007

By the Commission: Commissioners Capps and Adelstein concurring and issuing separate statements.

I. INTRODUCTION

1. In this Notice of Debarment and Order Denying Waiver Petition ("Notice"), we debar NextiraOne, LLC ("NextiraOne") from all activities associated with the schools and libraries universal service support mechanism ("E-Rate program").

II. BACKGROUND

2. The E-Rate program is one of several federal programs designed to promote and support the goal of universal service, i.e., making telecommunications available to all Americans.

3. As part of an effort to protect the resources of the E-Rate program from waste, fraud, and abuse, the Commission in 2003 adopted rules for suspending and debaring persons convicted of, or held civilly liable for, the commission or attempted commission of fraud and other similar offenses connected

1 See 47 C.F.R. § 54.521.

2 18 U.S.C. § 1343.

3 47 U.S.C. § 254(b)(6).

with the E-Rate program.⁴ The purpose of suspension and debarment is to prevent such persons from further participation in the E-Rate program for a certain period of time, and thereby to protect the USF.⁵

4. Pursuant to our rules, the Commission “shall suspend and debar” persons convicted of, or held civilly liable for, certain fraud-related offenses involving the E-Rate program, “absent extraordinary circumstances.”⁶ Such offenses include the “attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism.”⁷ Upon learning that a person has been convicted of or found liable for one of these offenses, our rules contemplate that the Commission will immediately suspend the person from the E-Rate program, provide “prompt notice” to that effect, and initiate debarment proceedings.⁸ Thereafter, our rules provide the suspended person thirty days to contest suspension or the proposed debarment, or seek to limit its scope, but state that relief from suspension “will not ordinarily be granted.”⁹ Once we have debarred a person, our rules state that the person will be prohibited from involvement with the E-Rate program for three years, although the rules contemplate that the Commission might modify the period in particular circumstances.¹⁰

5. Since the debarment rule became effective, eight individuals and four corporations have been convicted of fraud-related offenses arising out of activities associated with the E-Rate program. After each conviction, the Commission initiated debarment proceedings against the perpetrators. The Commission has debarred the eight individuals,¹¹ and two corporations,¹² and today resolves the

⁴ 47 C.F.R. § 54.521; *Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (“*Second Report and Order*”).

⁵ *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 66.

⁶ 47 C.F.R. § 54.521(b). The rule defines a “person” as “any individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized.” 47 C.F.R. § 54.521(a)(6). Opting for a stringent debarment rule, the Commission explicitly rejected a government-wide standard providing that an entity “may” be debarred based on a conviction or civil judgment. *See Second Report and Order*, 18 FCC Rcd at 9227, ¶ 74.

⁷ 47 C.F.R. § 54.521(c).

⁸ *Id.* § 54.521(e).

⁹ *Id.* § 54.521(e)(4).

¹⁰ *Id.* § 54.521(f) (reverse or limit the period of suspension or debarment “upon a finding of extraordinary circumstances”); *id.* § 54.521(g) (lengthen or extend the period “if necessary to protect the public interest”).

¹¹ Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, to Oscar Alvarez, Connect2 Internet Network, Inc., 18 FCC Rcd 26716, Notice of Debarment, December 23, 2003; Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, to John Angelides, Connect2 Internet Network, Inc., 18 FCC Rcd 26722, Notice of Debarment, December 23, 2003; Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, to Duane Maynard, Howe Electric, Inc., 18 FCC 26729, Notice of Debarment, December 23, 2003; Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to John Dotson, 19 FCC Rcd 23636, Notice of Debarment, December 6, 2004; Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to John Henry Weaver, FCC Rcd 10925, Notice of Debarment, June 23, 2005; Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to Haider Bokhari, 20 FCC Rcd 10941, Notice Debarment, June 23, 2005; Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to Qasim Bokhari, 20 FCC Rcd 10931, Notice of Debarment, June 23, 2005; Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to Ronald R. Morrett, 20 FCC Rcd 14321, Notice of Debarment, August 30, 2005.

debarment proceedings against two more corporations, NextiraOne¹³ in this Order and Premio, Inc. in a separate notice.¹⁴

6. NextiraOne is a Delaware limited liability company formed in April 2001 when Platinum Equity, LLC acquired and integrated Williams Communications Solutions, LLC (“WCS”) and another entity.¹⁵ At the time Platinum acquired WCS, the latter participated in the E-Rate program by selling internal connections to schools and libraries.¹⁶ After acquisition, Platinum reorganized WCS and created a new group, the Strategic Technology Consulting Practice, which included employees who had been involved in WCS’ E-rate business, and provided educational consulting services for a fee.¹⁷

7. On April 20, 2006, NextiraOne pled guilty to and was subsequently convicted of federal wire fraud in violation of 18 U.S.C. § 1343 for activities in connection with its participation in the E-Rate program with the Oglala Nation Education Coalition (“ONEC”) schools on the Pine Ridge Reservation in South Dakota.¹⁸ The activities that led to NextiraOne’s conviction took place from at least December 2000 to at least December 2002, and thus involved both NextiraOne and its predecessor, WCS.¹⁹ Among other things, NextiraOne or WCS: (1) falsely promised ONEC schools that they could participate in the E-Rate program for free; (2) guided ONEC in submitting E-Rate applications to USAC that contained non-competitive manufacturer “list” prices; (3) billed USAC for equipment specified that had not been delivered; and (4) billed USAC for an item not eligible for E-Rate support, and also made it appear that NextiraOne had billed ONEC for the non-discounted portion of equipment and services funded by E-Rate when in fact it had not.²⁰ As a result of its fraudulent conduct, NextiraOne over-billed the E-Rate program in excess of \$1 million.²¹

¹² See *NEC-Business Network Solutions, Inc.*, Notice of Debarment and Order Denying Waiver Petition, FCC 06-91 (rel. June 30, 2006) (“*NEC Debarment Order*”); *Inter-Tel Technologies, Inc.*, Notice of Debarment, FCC 06-92 (rel. June 30, 2006) (“*Inter-Tel Debarment Notice*”).

¹³ See Letter from Kris A. Monteith, Chief, Enforcement Bureau, to Robert J. Buhay, Chief Financial Officer, NextiraOne, LLC, 21 FCC Rcd 4435, Notice of Suspension and Initiation of Debarment Proceedings, April 28, 2006 (“*NextiraOne Suspension Notice*”), 71 Fed. Reg. 27254-56 (May 10, 2006). Our rules contemplate that notice of debarment will be provided within 90 days of receipt of information submitted by the respondent in response to a suspension notice. 47 C.F.R. § 54.521(e)(5). NextiraOne filed its Opposition Petition on May 26, 2006; 90 days thereafter is August 24, 2006. See also *infra*, note 67.

¹⁴ See *Premio, Inc.*, Notice of Debarment, FCC 06-177 (rel. Jan. 22, 2007); Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to Mr. Tom Tsao, Vice President, Premio, Inc., 21 FCC Rcd 2128, Notice of Suspension and of Proposed Debarment, February 28, 2006.

¹⁵ *NextiraOne, LLC, Petition for Waiver of Section 54.521 of the Commission’s Rules*, April 14, 2006, 2 (“*Waiver Petition*”). When formed, the company was named Nextira, LLC, which changed to NextiraOne in October 2001. See *id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *United States v. NextiraOne, LLC*, Criminal Docket No. CR-40041-LLP, Plea Agreement (D.S.D. April 20, 2006) (“*NextiraOne Plea Agreement*” or “*Plea Agreement*”). At approximately the same time, NextiraOne also entered into a civil settlement with the United States. See *Plea Agreement*, Exhibit B.

¹⁹ *NextiraOne Plea Agreement* at 3.

²⁰ *NextiraOne Suspension Notice* at 2; See generally *NextiraOne Plea Agreement*.

²¹ *NextiraOne Suspension Notice* at 2; See generally *NextiraOne Plea Agreement*.

8. Shortly before entering its guilty plea, on April 14, 2006, NextiraOne filed a Petition for Waiver of the Commission's debarment rules.²² That same day, as obligated by the Plea Agreement and upon NextiraOne's request, the United States Department of Justice ("DOJ") filed a letter explaining NextiraOne's cooperation throughout the government's investigation into NextiraOne's E-Rate activities.²³

9. On April 28, 2006, consistent with the Commission's debarment rule, the Enforcement Bureau issued a notice immediately suspending NextiraOne from participating in the E-Rate program and initiating debarment proceedings against the company.²⁴ In issuing the notice, the Bureau acknowledged but did not decide the issues raised by the Waiver Petition and the DOJ letter, and instead stated that it would consider the arguments and evidence presented in both filings in the debarment proceeding.²⁵

10. Two days later, on April 30, 2006, Black Box Corporation ("Black Box") acquired NextiraOne.²⁶ Black Box is "the world's largest technical services company dedicated to designing, building, and maintaining data and voice infrastructure systems," and "serves more than 150,000 clients in 141 countries throughout the world."²⁷ In response to the suspension notice, on May 26, 2006, Black Box and NextiraOne (collectively "NextiraOne") submitted additional information to supplement the Waiver Petition.²⁸

III. DISCUSSION

11. In this Notice, we debar NextiraOne from participating in the E-Rate program because of its conviction on a fraud-related offense involving its participation in the E-Rate program, finding no extraordinary circumstances exist to avoid or waive debarment, or reverse suspension. We find that NextiraOne's conduct merits a debarment of at least three years, as contemplated by our debarment rule, but in light of several important factors, we limit the debarment to one year.

12. NextiraOne argues that several factors constitute "extraordinary circumstances" sufficient to avoid debarment. First, NextiraOne argues that its cooperation with DOJ was extraordinary, in that upon learning of the government's investigation, it undertook an "extensive and costly internal review of its E-Rate activities," involving the review of voluminous numbers of documents and records, hiring a forensic consulting firm to evaluate the scope of the fraud involved, identifying material witnesses, and making a wide variety of materials and witnesses available to the government.²⁹ Second, NextiraOne argues that it assumed full responsibility for its misconduct and took swift remedial action to correct it by dismantling the affected business unit, firing or laying off the employees involved, implementing a corporate code of conduct, and retaining new management.³⁰ Third, NextiraOne points out that it has voluntarily elected not to participate in the E-Rate program for more than three years through its

²² See generally *Waiver Petition*.

²³ Letter from Scott Hammond, Deputy Assistant Attorney General, Antitrust Division, Department Of Justice, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed April 14, 2006).

²⁴ See *NextiraOne Suspension Notice*, 71 Fed. Reg. 27254-56 (May 10, 2006).

²⁵ *Id.*

²⁶ Letter from James J. Regan, Counsel for Black Box Corporation and NextiraOne, LLC, to Diana Lee, Esq., Federal Communications Commission at 2 (filed May 26, 2006) ("*Opposition Petition*").

²⁷ *Id.* at 11.

²⁸ See generally *Opposition Petition*.

²⁹ *Waiver Petition* at 5-7; *Opposition Petition* at 6.

³⁰ *Waiver Petition* at 8-9; *Opposition Petition* at 6.

abandonment of outstanding requests for reimbursement and submission of no new claims in Funding Year 6 (2003-04), and as well as its decision not to submit any bids, perform any services, or seek any funding in connection with the E-Rate program since then.³¹ Fourth, NextiraOne suggests that its acquisition by Black Box further counsels against debarment, because that company and its personnel were not involved in NextiraOne's fraud, and its management, oversight, and philosophy are certain to protect the E-Rate program from waste, fraud, and abuse.³²

13. We reject NextiraOne's arguments and find that NextiraOne has not satisfied the high standards necessary to avoid debarment or reverse suspension. When it adopted the debarment rule, the Commission explicitly stated that "[a]lthough the governmentwide rules [for debarment] provide that agencies 'may' debar or suspend persons convicted or held civilly liable, we conclude that a rule *requiring* the Commission to suspend and debar such persons absent extraordinary circumstances will better serve the Commission's goal of limiting waste, fraud, and abuse."³³ The text of the Commission's rule expressly states that the agency "*shall* suspend and debar" for conviction of any of the enumerated offenses, "absent extraordinary circumstances."³⁴ To give context to "extraordinary circumstances," the Commission gave but one example: "reversal of the conviction or civil judgment upon which the debarment was based shall constitute extraordinary circumstances."³⁵ The Commission thus described suspension and debarment as "automatic actions" that are "an appropriate and prudent means of maintaining the integrity of the schools and libraries support mechanism."³⁶ As a result, since the debarment rules became effective, the Commission has been presented with the convictions of eight individuals and (excluding NextiraOne and Premio, Inc.) two corporations for fraud in connection with their participation in the E-Rate program, and the Commission has debarred all of them – notwithstanding that each of the corporations argued that facts similar to those presented by NextiraOne justified avoidance of debarment. As we have previously stated, we do not consider the actions like those taken by NextiraOne – cooperating with DOJ, accepting full responsibility for the fraud, implementing protective remedial measures – to be extraordinary circumstances in our decision to debar.³⁷

14. The simple fact remains that NextiraOne has pled guilty to and was convicted of wire fraud, and that fraud resulted in overcharging the E-Rate program more than \$1 million. The conduct for which NextiraOne was convicted is a serious offense against the E-Rate program and one of the express

³¹ *Waiver Petition* at 10-11; *Opposition Petition* at 13.

³² *Waiver Petition* at 11-12; *Opposition Petition* at 8-12.

³³ *Second Report & Order*, 18 FCC Rcd. at 9227. Because the Commission rejected a more "permissive" debarment standard, NextiraOne's reliance on mitigating factors related to those more permissive rules is unpersuasive. *Waiver Petition* at 13-15; *Opposition Petition* at 18-20. While the Commission explained that its debarment rule would be "informed" by the governmentwide rules, clearly the Commission's unambiguous rejection of a more discretionary standard cannot mean that the factors associated with exercising that discretion are among those rules that "inform" the Commission's application of its stricter rule. Likewise, given that Puerto Rico Department of Education was not convicted of any crime in connection with the E-Rate program, NextiraOne's suggestion that our decision not to debar that entity should be followed here is unavailing. *Waiver Petition* at 8-9; *Opposition Petition* at 16-18. *But see Federal-State Joint Board on Universal Service, Petition of the Puerto Rico Department of Education to Release Funds Associated with the Schools and Libraries Universal Service Support Mechanism for Years 2001 and 2002*, Order, 18 FCC Rcd 25417 (2003).

³⁴ 47 C.F.R. § 54.521(b) (emphasis added).

³⁵ *Second Report & Order*, 18 FCC Rcd. at 9226.

³⁶ *Id.* at 9227.

³⁷ *NEC Debarment Order* at ¶ 22.

“causes for suspension and debarment” listed in section 54.521(c) of our rules.³⁸ NextiraOne has not shown that extraordinary circumstances exist to deviate from the “automatic action” of debarment. Strict application of the debarment rule to remove bad actors from the program for a period of time is necessary to protect the integrity of the program, and to guard against the possibility of additional waste, fraud, and abuse.³⁹ Accordingly, we debar NextiraOne.

15. We also deny NextiraOne’s request to waive the debarment rule in this case. Those who seek to avoid debarment by requesting waiver of the rule must meet a similarly high burden. Section 1.3 of the Commission’s rules governs petitions for waiver generally, and provides that a waiver may be granted upon “good cause shown.”⁴⁰ Because Commission rules are presumed valid, the petitioner bears a heavy burden.⁴¹ The Commission may exercise its discretion to waive a rule “only if special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest.”⁴² We find that the requisite special circumstances are not present here. For the reasons explained below, however, we limit NextiraOne’s debarment period to one year. We find, based on the unique circumstances of this case, imposing a one-year debarment period, with additional precautionary measures, is in the public interest.

16. Although we deny NextiraOne’s request for waiver of the debarment rule and find that NextiraOne’s actions do not constitute the extraordinary circumstances necessary to avoid debarment, we do find that its actions justify a reduction of our standard debarment period of three years. In our recent *NEC Debarment Order* and *Inter-Tel Debarment Notice*, we relied on the following facts to reduce the debarment period to six months and one year, respectively: (1) DOJ submitted letters indicating that the corporations had cooperated with the government during its investigation, and that such cooperation was valuable in the detection and prosecution of E-Rate fraud; (2) the corporations accepted full responsibility for their actions by compensating the USF for their wrongdoing, and implemented extensive remedial measures to protect the fund in the future; and (3) the corporations had not participated in the E-Rate program for some length of time already.⁴³ Each of these facts exists here as well, and we therefore limit NextiraOne’s debarment period to one year.

17. First, DOJ submitted a letter to the Commission documenting NextiraOne’s cooperation with the investigation of NextiraOne. DOJ characterized NextiraOne’s cooperation as “extensive,” and “helpful in understanding the events that occurred at Pine Ridge and at other school districts.”⁴⁴ DOJ explained that the company not only produced an extensive number of documents and encouraged employees to come forward for interviews, but also took the unusual and helpful step of waiving its work product privilege to make its own interview notes available to the government.⁴⁵ In addition, NextiraOne

³⁸ 47 C.F.R. § 54.521(c).

³⁹ *NEC Debarment Order* at ¶ 22.

⁴⁰ 47 C.F.R. § 1.3.

⁴¹ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) (“*WAIT Radio*”). See also *Orange Park Florida T.V., Inc. v. FCC*, 811 F.2d 664, 669 (D.C. Cir. 1987).

⁴² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁴³ See *NEC Debarment Order* at ¶¶ 23-27; *Inter-Tel Debarment Notice* at ¶¶ 16-18.

⁴⁴ DOJ Letter at 2.

⁴⁵ DOJ Letter at 1-2.

has committed in its plea and settlement agreements with DOJ to ongoing cooperation in this and other current federal investigations of E-Rate matters and related litigation.⁴⁶

18. Second, as DOJ also observed in its letter, NextiraOne has accepted full responsibility for its past actions, and implemented remedial measures to protect the fund in the future. As DOJ explained, “[t]hrough the payment of almost \$5 million in a criminal fine, civil settlement, and restitution to the Pine Ridge schools, NextiraOne has provided full reimbursement to the Universal Service Fund and to the schools that were victimized by the fraud.”⁴⁷ In addition, NextiraOne terminated all of the employees involved in the fraud, implemented a code of conduct, and established a compliance hotline with a no-retaliation policy.⁴⁸ Moreover, NextiraOne is now part of Black Box, which has additional ethical standards, to which NextiraOne is subject.⁴⁹ Finally, should NextiraOne participate in the E-Rate program within five years of executing its plea agreement, it has agreed to do so only under the following circumstances: (1) appointing a compliance officer; (2) undertaking internal monitoring and conducting audits to ensure compliance with E-Rate application and bidding requirements and procedures; (3) implementing a continuing education and training program for E-Rate rules, regulations, and procedures; (4) coordinating with key executives in the company’s various functional units; (5) disclosing any program violations to higher level management; and (6) periodically reporting to the Commission’s Office of Inspector General.⁵⁰

19. In considering the appropriate debarment period, we also note that NextiraOne has not participated in the E-Rate program for at least three years. NextiraOne has explained that in Funding Year 6 (2003-04), it abandoned pending requests for reimbursement and did not submit any invoices, and in Funding Years 7, 8, and 9 (2004-05, 2005-06, 2006-07), it has not submitted any bids to perform E-Rate services, has not performed any E-Rate services, and has not requested or received any E-Rate funds.⁵¹

20. Under these circumstances, where DOJ has recognized and valued the company’s extensive and early cooperation, the company has remedied fully its past misconduct and implemented extensive remedial measures designed to protect the USF in the future, and the company has not participated in the E-Rate program for more than three years, we limit NextiraOne’s debarment period to one year. This is the same debarment period we imposed in our recent *Inter-Tel Debarment Notice*. We decline to reduce the debarment period to six months as we did in the *NEC Debarment Order*, because we do not find that NextiraOne’s cooperation with DOJ, extensive as it was, to be of the same character or value to the government in terms of eliminating waste, fraud, and abuse in the E-Rate program, which is the purpose of our debarment rule. As we explained in both the *Inter-Tel* and *NEC* debarment decisions, DOJ gave special weight to NEC’s cooperation as the first cooperator in an antitrust conspiracy, which led to the discovery of additional misconduct that might not have been detected absent the company’s cooperation.⁵²

⁴⁶ *Plea Agreement* at ¶¶ 13-16. The cooperation provisions in the *Plea Agreement* are limited to one year from the date the court accepts the *Plea Agreement*. See *Plea Agreement* at ¶ 13.

⁴⁷ See *DOJ Letter* at 2.

⁴⁸ See *Waiver Petition* at 8.

⁴⁹ *Opposition Petition* at 9-12. NextiraOne notes that it will remain a separate legal entity under Black Box. See *id.* at note 6.

⁵⁰ See *Plea Agreement* at ¶ 17. These requirements apply to NextiraOne, its successors and assigns. *Id.*

⁵¹ *Waiver Petition* at 10-11. USAC records confirm that no payments have been made to NextiraOne for Funding Year 6 and thereafter.

⁵² *NEC Debarment Order* at ¶ 24; *Inter-Tel Debarment Notice* at ¶ 17.

21. As part of our decision to limit the debarment periods of NEC and Inter-Tel, we imposed additional precautionary measures to protect the E-Rate program.⁵³ NextiraOne states that it has no current intention to participate in the E-Rate program.⁵⁴ In the event that NextiraOne re-enters the E-Rate program within five years of executing the plea agreement, however, we impose those same additional precautionary measures to protect the program. First, we order USAC to review with heightened scrutiny NextiraOne's applications submitted during the first two funding years after re-entry. Second, we order USAC to conduct automatic annual audits regarding NextiraOne's compliance with applicable laws and Commission rules governing the E-Rate program, for each of the first two funding periods upon NextiraOne's re-entry.

22. Finally, we address whether the debarment of NextiraOne, LLC extends to NextiraOne Federal, LLC ("NXOF"). At the time of NextiraOne's conviction, which triggered the Commission's debarment rule, NXOF was a subsidiary of NextiraOne.⁵⁵ Our debarment rule states that "suspension and debarment of a person other than an individual constitutes suspension and debarment of all divisions and/or other organizational elements from participation in the program for the suspension and debarment period, unless the notice of suspension and proposed debarment is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or specific types of transactions."⁵⁶ Thus, absent any contrary limitation, today's debarment action would be applicable to NXOF.

23. In support of the contention that the debarment should not include NXOF, NXOF submitted information explaining in detail how the two companies are managed and operate independently. Specifically, at the time of NextiraOne's conviction, Platinum Equity, LLC ("Platinum"), owned NextiraOne, which owned 100% of Timeplex, LLC, which in turn owned 100% of NXOF.⁵⁷ Beginning no later than the third quarter of 2004, NXOF reported directly to Platinum, both in terms of financial information and management, and NXOF had a sole manager (director) who was not a NextiraOne employee.⁵⁸ In addition, as of NextiraOne's conviction date, the two companies performed certain services for one another only through arms-length transactions at pre-determined commercial rates, and pursuant to purchase orders for services and invoices for payment.⁵⁹ In sum, "as of April 20, 2006, the date of NextiraOne's conviction, NXOF did not report in any form to NextiraOne, NXOF and NextiraOne had separate managers (directors), NXOF was not controlled managerially or financially by NextiraOne, and none of NXOF's officers were employees of NextiraOne. . . . All business dealings between NXOF and NextiraOne were done pursuant to arms-length written agreement at commercial rates."⁶⁰ Since the date of NextiraOne's conviction, the two companies have continued to operate

⁵³ *NEC Debarment Order* at ¶¶ 19-20; *Inter-Tel Debarment Notice* at ¶ 28.

⁵⁴ *Plea Agreement* at ¶ 17; *Waiver Petition* at 11; *Opposition Petition* at 6-7.

⁵⁵ *See Waiver Petition* at 12; *Opposition Petition* at 3, note 4.

⁵⁶ 47 C.F.R. § 54.521(d).

⁵⁷ Affidavit of Stephen L. Snyder, President of NextiraOne Federal, LLC, at ¶ 5 (appended to *NXOF Letter*) ("Snyder Aff."). NXOF was originally created in 2000 under the name Timeplex Federal Systems, LLC. *Id.* at 2. NextiraOne was originally created in 1997 under the name WilTel Communications, LLC. *Id.* at ¶ 3. Platinum acquired the Timeplex companies in 1999, and NextiraOne and related companies in 2001. *Id.* at ¶ 4. Because of Timeplex's ownership and work at U.S. government secured sites, it maintained a separate board and management after the acquisition by Platinum. *Id.* at ¶ 6.

⁵⁸ *Id.* at ¶ 7.

⁵⁹ *Id.* at ¶ 8.

⁶⁰ *Id.* at ¶ 9.

independently and separately, and NXOF has ceased to be a subsidiary of NextiraOne.⁶¹ In addition, NextiraOne points out that DOJ expressly acknowledged in the *Plea Agreement* that NXOF operated as a separate company at the time of the Plea and was not involved in any of the events that led to NextiraOne's conviction.⁶²

24. NXOF further states that, because it operates independently of NextiraOne, debarment of NXOF is not necessary to protect the E-Rate program, and in fact would be punitive.⁶³ NXOF explains that because 100% of its business is to provide goods and services to the federal government, "debarment of NXOF would have devastating business consequences for the company."⁶⁴ NXOF has a number of outstanding contracts and proposals that it states would be jeopardized by its debarment, with the result that "[t]he reputational harm to NXOF would be irreparable" and "NXOF's 162 highly skilled employees would be in jeopardy of losing their jobs."⁶⁵

25. Under these specific circumstances, we clarify that NXOF is not subject to the NextiraOne debarment.⁶⁶ Although NXOF appeared to be a division and/or other organizational unit of NextiraOne as of the date of NextiraOne's conviction, we conclude that NextiraOne did not and does not control NXOF. In addition, NXOF was not involved in the conduct that led to NextiraOne's conviction, and, in fact, has never participated in the E-Rate program. As a result, extending NextiraOne's debarment to encompass NXOF is not necessary to protect the integrity of the E-Rate program; rather, debarment of NXOF would interfere with its legitimate business, completely unrelated to E-Rate. Accordingly, we clarify that NextiraOne's debarment does not include NXOF.

IV. CONCLUSION

26. Based on the foregoing and to protect the integrity of the E-Rate program, including the investments made by American consumers to benefit this nation's deserving school children, NextiraOne, including its successors and assigns, is hereby debarred from the E-Rate program for one year, effective August 24, 2006, the day NextiraOne received notice of the decision to debar.⁶⁷ During the period in which NextiraOne will serve its debarment, NextiraOne, including its successors and assigns, is prohibited from all activities "associated with or related to the schools and libraries support mechanism," or E-Rate program, including "the receipt of funds or discounted services through the schools and

⁶¹ In anticipation of Black Box's acquisition of Platinum, Platinum created a holding company into which the owners of NextiraOne transferred their interests in that company, and Timeplex, LLC transferred its interest in NXOF on April 25, 2006. *Id.* at ¶ 10. At that time, NXOF ceased to be a subsidiary of NextiraOne; the two became sister companies. *Id.* at ¶ 11. On April 30, 2006, Black Box acquired Platinum, and its organizational structure maintains the sister relationship between NextiraOne and NXOF. *Id.* at ¶ 12.

⁶² *Waiver Petition* at 12; *Plea Agreement* at 7 (stating that "NextiraOne Federal, LLC, a subsidiary of NextiraOne which operates as a separate company, was not involved in the events" that led to NextiraOne's conviction).

⁶³ Letter from James J. Regan, Esq., Counsel to NextiraOne Federal, LLC, to Diana Lee, Esq., Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (filed Aug. 30, 2006) ("*NXOF Letter*").

⁶⁴ Snyder Aff. at ¶ 15.

⁶⁵ *Id.*

⁶⁶ See 47 C.F.R. § 54.521(d).

⁶⁷ See 47 C.F.R. § 54.521(e)(5); Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to NextiraOne, LLC, c/o James Regan, Esq., Crowell and Moring, LLP, Notice of Debarment (August 24, 2006). On September 1, 2006, the Enforcement Bureau stayed the effect of the debarment notice solely with respect to NXOF. See Letter from William Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to NextiraOne, LLC, c/o James Regan, Esq., Crowell and Moring, LLP (September 1, 2006). Today's decision effectively ends the stay and excludes NXOF from E-Rate debarment.

libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.”⁶⁸ We will continue to take appropriate actions in future cases as warranted by the particular circumstances to protect the integrity of the program.

V. ORDERING CLAUSES

27. Accordingly, IT IS ORDERED, pursuant to section 54.521 of the Commission’s rules, 47 C.F.R. § 54.521, that NextiraOne, LLC., including its successors and assigns, IS DEBARRED from the schools and libraries universal service support mechanism for one year, effective August 24, 2006.

28. IT IS FURTHER ORDERED that, in the event that NextiraOne re-enters the E-Rate program within five years after executing the plea agreement, USAC shall review with heightened scrutiny NextiraOne’s applications submitted during the first two funding years upon its re-entry into the E-Rate program.

29. IT IS FURTHER ORDERED that, in the event NextiraOne re-enters the E-Rate program within five years after executing the plea agreement, USAC shall conduct automatic annual audits on NextiraOne’s E-Rate activities during the first two funding years upon its re-entry into the E-Rate program.

30. IT IS FURTHER ORDERED, pursuant to sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 and 154(i), and section 1.3 of the Commission’s rules, 47 C.F.R. § 1.3, that the Petition for Waiver filed by NextiraOne, LLC on April 14, 2006, is DENIED, as described herein.

31. IT IS FURTHER ORDERED that the Enforcement Bureau staff shall send, by certified mail/return receipt requested, a copy of this Notice of Debarment and Order Denying Waiver Petition to James J. Regan, Crowell and Moring, LLP, Counsel for NextiraOne, LLC, 1001 Pennsylvania Avenue, N.W., Washington, DC 20004-2595.

32. IT IS FURTHER ORDERED, pursuant to section 54.521 of the Commission’s rules, 47 C.F.R. § 54.521, that this Notice of Debarment and Order Denying Waiver Petition SHALL BE PUBLISHED in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch
Secretary

⁶⁸ See 47 C.F.R. §§ 54.521(a)(1), 54.521(a)(5), 54.521(d).

**CONCURRING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *NextiraOne, LLC, File No. EB-06-IH-1392*

By ensuring that schools and libraries are connected with the Internet, the E-Rate program continues to perform the critical function of helping to prepare our nation's children to succeed in the Digital Age. Nowhere is this truer than on tribal lands where technology plays a vital role in overcoming geographic, economic, and historical hardships. There are many people in the Schools and Libraries Division, at the FCC and Justice Department, and elsewhere, to be commended for their ongoing oversight of the program to ensure that limited resources go to those who need them most. The conviction and one year debarment of NextiraOne from the E-Rate program are evidence of the ongoing effort to root out waste, fraud, and abuse. While there were mitigating circumstances in this case to support the one year debarment period, I believe that a longer period may have been warranted given the severity of the company's actions and the opportunity to send a message to E-Rate participants that violations of the program will not be tolerated by the FCC. I therefore concur in this Order.

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
CONCURRING**

Re: *NextiraOne, LLC, File No. EB-06-IH-1392*

Since its inception, the universal service support mechanism for schools and libraries (commonly referred to as the E-rate program) has opened up a new world of learning and opportunity for millions of school children and library patrons. To ensure the continued success of the E-Rate program, we must remain committed to monitoring, auditing, reviewing and reinforcing the program. A critical part of our Commission oversight is the use of debarment, which prohibits bad actors from participating in the program. Accordingly, I support our decision in this Order to debar NextiraOne from all involvement in the E-Rate program.

I concur in, rather than approve, this Order because I would have supported a longer debarment period. The Commission's rules provide for a debarment period of three years, which may be extended to protect the public interest or reduced upon a finding of extraordinary circumstances. I note that the Department of Justice has encouraged the Commission to exercise our debarment policy in a way that encourages early and complete cooperation from defendants, and I recognize that the Commission may take into account payment of fines and restitution, the length of time that a provider has not participated, and most importantly a high degree of cooperation with law enforcement. Even weighing these factors, the one-year debarment period adopted in this Order falls short, given the scope and seriousness of the fraud-related activities in this case. Schools do not have unlimited resources, and I am concerned about the effect that fraudulent activity like that perpetrated by NextiraOne can have for school systems like the Oglala Nation Education Coalition and their students. In this case, a longer debarment period would have sent a stronger and clearer message that fraud will not be tolerated.